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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,825	12/04/2000	Freeman Leigh Rawson III	AUS920000347US1	4289

7590 10/26/2005
DILLON & YUDELL LLP
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EXAMINER

CHOUDHURY, AZIZUL Q

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/727,825

Applicant(s)

RAWSON, FREEMAN LEIGH

Examiner

Azizul Choudhury

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

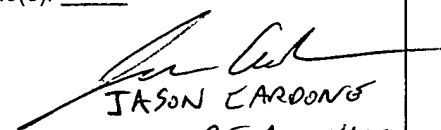
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 6-11, 13-17, 20, 22-24 and 26-28.
Claim(s) withdrawn from consideration: 3, 14, 18-19 and 25.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


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SPE AV2145

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's representatives express concern over four points of rejection. The first issue of concern involves the probes at multiple levels of each server. Particularly, the applicant's representative states that their design features a plurality of probes at a single server/device. In response, the examiner directs the applicant's representative's attention towards the Gilbert prior art. Within column 4, lines 23-37, Gilbert teaches the use of daemons (equivalent to probes that are locally placed within client devices) and how different daemon processes can run within one device (equivalent to the claimed plurality of probes at a single server/device). For further information regarding the daemons, columns 3-4 provide just some of the details regarding the daemons available within the Gilbert design. The second issue of concern involves the plurality of levels at each server. The examiner pointed to column 9, lines 65-67 of the Gilbert prior art wherein it disclosed that the class field indicates hardware or software errors, indicating the monitoring means for hardware and software. In addition, the examiner states that monitoring the OS is inherent. The applicant's representative accuses the examiner of being contradictory by relying on the de la Salle prior art which does not cite the trait of monitoring the OS. The examiner fails to see how it is contradictory to include the de la Salle prior art. By being inherent, the monitoring of the OS traits does not have to be literally disclosed within the art, instead by being inherent, it is known that such a trait must be present (even if not literally disclosed) within the design for the design to function. The third issue of concern involves the aggregation of levels across multiple servers. The applicant's representative states that Gilbert does not teach this trait. It is within the de la Salle prior art that this trait is taught (column 3, lines 41-67, de la Salle) and hence a 103 rejection was provided in combination. Finally, the fourth issue of concern involves command dissemination via sub-division into server levels. The design by de la Salle first allows different objects to be compiled into a single report (column 3, lines 41-67, de la Salle), wherein the objects are produced by a number of different probes. Hence, a centralized management computer allows for a user to view the network information in a single report, the information that has been gathered by a plurality of probes. Since a centralized management computer (host) is able to read from a plurality of probes and locations, and de la Salle teaches that the design allows a user to use the collected information to manage and tune the network (essentially stating that means are present by which to write to the plurality of probes and client devices at the various locations), it is clearly obvious that means are present by which to send a command from a host and have it distributed accordingly to their respective client devices. In other words, the feature is obvious because if the information to manage and tune the network that is sent out from the host is not generated, divided and transmitted properly, the proper commands cannot be properly received and processed by the appropriate clients (as is done within the de la Salle art).

AC